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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 SEP 16 PM 2:34

SANDRA K. THORNTON, CLERK
BY: 

5 IN THE SUPERIOR COURT

6 STATE OF ARIZONA, COUNTY OF YAVAPAI

7 STATE OF ARIZONA,

V1300CR201080049

8 Plaintiff,

STATE'S PRESENTENCE MEMORANDUM

9 vs.

(The Honorable Warren Darrow)

10 JAMES ARTHUR RAY,

11 Defendant.

12
13 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney,
14 hereby provides this Court with the State's sentencing recommendation and addresses several
15 legal issues.

16
17 The State urges this Court to sentence Defendant to the maximum aggravated sentence of
18 nine (9) years in the Arizona Department of Corrections – three years for each count of
19 Negligent Homicide. Argument in support of the State's recommendation is provided below and
20 the State will make additional comments to the Court at the sentencing.

21 This Memorandum also addresses the following legal issues:

- 22
23 I The State's sentencing recommendation
24 II Court shall consider all reliable information in imposing sentence
25 III Court should impose consecutive sentences
26 IV Additional aggravating factors
V Restitution for Victims
VI Effect of civil settlement on restitution
VII State's request for costs of prosecution

MEMORANDUM OF POINTS AND AUTHORITIES

I. State's sentencing recommendation

Arizona Revised Statutes § 13-101 sets forth the following purposes of Title 13:

It is declared that the public policy of this state and the general purposes of the provisions of this title are:

1. To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
5. To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized;
6. To impose just and deserved punishment on those whose conduct threatens the public peace; and
7. To promote truth and accountability in sentencing.

In sentencing Defendant, this Court must consider the public policy of this state that the purpose of a sentence is to (1) **prevent the commission of offenses through the deterrent influence of the sentence;** (2) **to impose just and deserved punishment;** and (3) **to promote accountability.** The State urges this Court to sentence Defendant to nine years in the Department of Corrections, an aggravated consecutive sentence of three years for each count of Negligent Homicide, the maximum allowed given the jury finding of one statutory aggravating circumstance.

The lives of Kirby Brown, James Shore and Liz Neuman were unjustifiably and inexcusably extinguished at the hands of Defendant. Many more participants at Defendant's Spiritual Warrior event suffered significant physical and emotional harm – all people who trusted Defendant and trusted he knew what he was doing. Even his own employee, Megan Fredrickson,

1 tried to remind him inside his heat event that: "James, these people are your responsibility" – to
2 no avail. *Exhibit A, Partial Trial Transcript, Testimony of Sean Ronan, 6/3/11 at 46:6-23.*

3 **The Court must impose a just and deserved punishment.**

4 Defendant needlessly, disturbingly, inexcusably and unconscionably forfeited the lives of
5 three completely innocent participants who trusted Defendant. The punishment imposed by this
6 Court should reflect the permanent nature of the loss of the three victims; the substantial harm
7 and terrible emotional impact on their families; the opportunities Defendant had to avoid
8 senselessly causing their deaths; and the opportunities and the significant obligation Defendant
9 had to assure the safety of participants who paid to attend his event.

10 Three lives are forever gone. Children, daughters, a wife, mothers and fathers, brothers
11 and sisters, and other family relatives have been senselessly robbed of the presence, the
12 companionship, the parenting, the support, the opportunities and the love of Kirby Brown, James
13 Shore and Liz Neuman. The permanency of this loss, the senselessness of this loss, and the
14 unconscionable nature of the Defendant's actions in causing this loss must be reflected in the
15 Court's sentence. Three years in prison for each count of Negligent Homicide, for each life the
16 Defendant extinguished by his criminally negligent conduct, should be imposed by this Court.

17 **The Court must impose a prison sentence to deter negligent business practices in**
18 **this State.**

19 Arizona Revised Statutes § 13-101 also mandates that this Court consider the deterrent
20 effect of the sentence to be imposed. This stated purpose in the statute has perhaps never been
21 more vital than in this case where a defendant, operating as a business, neglects his obligation to
22 conduct his highly lucrative business in such a way as to ensure the safety of his participants.
23 Arizona's criminal code addresses situations where a person is criminally negligent and causes
24 death, and does not allow perpetrators to hide behind a corporate veil to escape responsibility.
25
26

1 Our code specifically proscribes conduct that unjustifiably and inexcusably causes substantial
2 harm to an individual – exactly the conduct engaged in by Defendant – and provides punishment
3 for such conduct. Whether a person acts in their individual capacity or on behalf of a business
4 does not change the consequences of criminally negligent acts.

5 The criminal code – and the sentences imposed by courts – serves a significant and
6 important function in insuring that, throughout this country, businesses operate in such a way
7 that lives are not needlessly harmed or lost. When an individual or a business causes the death of
8 another in a manner found to be criminally negligent, courts **must** ensure proper punishment and
9 consequences in order to deter other businesses from operating in an unsafe fashion. This Court
10 must consider the deterrent effect when imposing the sentence in this case.

11 **This Court must hold Defendant accountable**

12 Finally, A.R.S. § 13-101 states the purpose of our criminal code is to promote truth and
13 accountability in sentencing. Now is the time for Defendant to be held accountable for his
14 criminal conduct that showed such an absence of respect for human life. The State respectfully
15 urges this Court to do so by sentencing Defendant to the Department of Corrections for nine
16 years.
17 years.

18 **II. Court shall consider all reliable information in determining sentence.**

19 The purpose of a presentence hearing is to insure that the sentencing judge is fully
20 informed as to the character of the individual to be sentenced and the circumstances of the crime.
21 *State v. Ohta*, 114 Ariz. 489, 492, 562 P.2d 369, 372 (1977); *A.H. by Weiss v. Superior Court*,
22 184 Ariz. 627, 630, 911 P.2d 633, 636 (App. 1996). “The trial judge has wide discretion to
23 review a variety of sources and types of information in determining the extent of punishment.”
24 *Id.* “The Court should take into account both the crime before it and the past conduct and moral
25
26

1 character of the defendant so that the punishment may fit the offense and the offender." *State v.*
2 *Gray*, 122 Ariz. 445, 448, 595 P.2d 990, 993 (1979); *State v. Shuler*, 162 Ariz. 19, 21, 780 P.2d
3 1067, 1069 (App. 1989).

4 Rule 26.7, Ariz. R. Crim. P., permits either party "to introduce any reliable, relevant
5 evidence, including hearsay, in order to show aggravating or mitigating circumstances, to show
6 why sentence should not be imposed, or to correct or amplify the pre-sentence, diagnostic or
7 mental health reports." In order to meet these purposes, the rules governing the admissibility of
8 evidence at trial do not apply at a sentencing hearing. *See State v. Con*, 137 Ariz. 148, 149, 669
9 P.2d 581, 582 (1983).

10 In *Williams v. New York*, 337 U.S. 241, 246-247, 69 S.Ct. 1079, 1083 (U.S. 1949), the
11 United States Supreme Court explained the rationale for different evidentiary rules governing
12 trial and sentencing procedures as follows:
13

14 In addition to the historical basis for different evidentiary rules governing trial
15 and sentencing procedures there are sound practical reasons for the distinction. In
16 a trial before verdict the issue is whether a defendant is guilty of having engaged
17 in certain criminal conduct of which he has been specifically accused. Rules of
18 evidence have been fashioned for criminal trials which narrowly confine the trial
19 contest to evidence that is strictly relevant to the particular offense charged. These
20 rules rest in part on a necessity to prevent a time consuming and confusing trial of
21 collateral issues. They were also designed to prevent tribunals concerned solely
22 with the issue of guilt of a particular offense from being influenced to convict for
23 that offense by evidence that the defendant had habitually engaged in other
24 misconduct. A sentencing judge, however, is not confined to the narrow issue of
25 guilt. His task within fixed statutory or constitutional limits is to determine the
26 type and extent of punishment after the issue of guilt has been determined. Highly
relevant - if not essential - to his selection of an appropriate sentence is the
possession of the fullest information possible concerning the defendant's life and
characteristics. And modern concepts individualizing punishment have made it all
the more necessary that a sentencing judge not be denied an opportunity to obtain
pertinent information by a requirement of rigid adherence to restrictive rules of
evidence properly applicable to the trial.

1 The *Williams* Court upheld the trial court's consideration of information obtained from
2 the probation department and other sources, and concluded that the right to confront adverse
3 witness has never applied to sentencing. *Id.* at 251-252, 69 S.Ct. at 1085. Since its opinion in
4 *Williams*, the Supreme Court has never reconsidered its holding. See *State v. McGill*, 213 Ariz.
5 147, 158, 140 P.3d 930, 941 (2006) ("In the more than fifty years since it decided *Williams*, the
6 Supreme Court has never suggested otherwise." *Id.*) "Arizona also has long held that use of
7 hearsay evidence at the penalty phase of a trial does not violate the Confrontation Clause." *Id.*

8 "What constitutes reliable or responsible hearsay is of necessity largely within the
9 discretion of the trial court." *State v. Donahoe*, 118 Ariz. 37, 44, 574 P.2d 837 (1977). In *State v.*
10 *Jones*, 147 Ariz. 353, 710 P.2d 463 (1985), the Arizona Supreme Court noted the following:

11 "[I]nformation" includes only those facts which are substantiated. Unarticulated
12 thoughts, unidentified documents, and unattributed statements do not provide
13 "information" sufficient to support a finding of aggravated circumstances.
14 "Evidence" to be admitted for sentencing purposes is, like other evidence,
15 governed by the rules of evidence. "Information" may be considered even though it
16 may not meet the requirements of the evidence rules. However, the rule of common
17 sense applies even where the rules of evidence do not. The record must show what
18 the information consists of and where it comes from and must indicate that it has
19 some substance above rumor, gossip or speculation.

20 *Id.* at 355, 710 P.2d at 465.

21 After the jury returned its verdict, the State received numerous e-mails and letters from
22 individuals personally affected by their relationship with Defendant. All of the e-mails and
23 letters were immediately disclosed to Defendant. Detective Diskin has contacted the senders and
24 verified that the e-mails or letters were in fact written by the identified authors and accurately
25 represented their experience. While the State will call three of the writers to testify before this
26 Court, the State will move to admit the remainder through the testimony of Detective Diskin who
has verified both the identity of the sender and the accuracy of the representations therein.

1 **III. Consecutive Sentences:**

2 Arizona Revised Statutes § 13-711 provides as follows.

3 **Consecutive terms of imprisonment**

4 A. Except as otherwise provided by law, if multiple sentences of imprisonment
5 are imposed on a person at the same time, the sentence or sentences imposed by
6 the court shall run consecutively unless the court expressly directs otherwise, in
7 which case the court shall set forth on the record the reason for its sentence.

8 "Arizona has firmly adopted the multiple victim policy consideration." *State v. White*,
9 160 Ariz. 377, 380, 773 P.2d 482, 485 (App. 1989). Under this consideration, the focus is on the
10 result of the act rather than the act itself. Therefore, when a defendant's single act causes a
11 separate criminal result to multiple victims, each result should be charged separately and a
12 defendant may be sentenced consecutively on each charge. *Id.* at 381, 773 P.2d at 486.

13 In *White*, the defendant was charged with one count of manslaughter, one count of
14 aggravated assault, one count of assault and one count of endangerment when the vehicle he was
15 driving struck four teenagers walking along side the road. Defendant was found guilty of all four
16 counts and was sentenced to consecutive sentences. On appeal, the defendant claimed the
17 imposition of consecutive sentences arising from his single act unconstitutionally placed him in
18 jeopardy more than once for the same offense. The Arizona Court of Appeals disagreed and
19 stated:
20

21 This court has previously held, however, that for purposes of the state and federal
22 double jeopardy clauses the term "offense" refers to the result of the act rather
23 than the act itself so that a defendant may be charged with each and every
24 criminal result flowing from his single act. *See State v. Gunter*, 132 Ariz. 64, 69,
25 643 P.2d 1034, 1039 (App. 1982). The *Gunter* court specifically rejected an
26 argument that the term "offense" should be defined in terms of the defendant's
intent in undertaking the action. *Id.* at 69-70, 643 P.2d at 1039-40. Instead, the
court noted that focusing on the result of the act rather than the intent of the actor
serves the general policy of the law. *Id.* at 70, 643 P.2d at 1040. Therefore,
appellant's contention that he cannot be sentenced consecutively because he did

1 not intend to injure his victims is without merit. Consequently, we reject his
2 double jeopardy contention.

3 *White, supra*, at 379-380, 773 P.2d at 484-485. The Court in *White* also rejected defendant's
4 second claim that A.R.S. § 13-116 precluded consecutive sentences when a defendant injured
5 more than one individual as a result of a single act. *Id.* at 380.

6 In *State v. Gunter*, 132 Ariz. 64, 643 P.2d 1034 (App. 1982), the defendant was charged
7 with two counts of aggravated assault as a result of a single act of throwing sulfuric acid in the
8 faces of his wife and her companion. Defendant claimed he was placed in double jeopardy by
9 charging and punishing him for multiple injuries arising from a single act. The Arizona Court of
10 Appeals disagreed and found "the former A.R.S. 13-1641 [now A.R.S. § 13-116] was not
11 designed to prohibit prosecution and punishment for an act which harms more than one person."
12 *Id.* at 70, 643 P.2d at 1040.

13
14 Similarly, in *State v. Henley*, 141 Ariz. 465, 687 P.2d 1200 (1984), *abrogated on other*
15 *grounds by State v. Soliz*, 223 Ariz. 116, 219 P.3d 1045 (2009), the Arizona Supreme Court
16 found defendant was properly charged with two counts of aggravated assault and could receive
17 consecutive sentences when he fired one bullet which went through his intended victim's body
18 and entered the body of a man standing behind the victim. In so ruling, the Court noted:
19

20 When the act of firing one bullet results in two persons being injured, the person
21 firing the bullet is responsible for two separate and distinct injuries and therefore
22 has committed two assaults. This is so even though he has only committed one act
23 and may have only had one "original intent."

24 *Id.* at 468, 687 P.2d at 1222.

25 In *State v. Miranda*, 3 Ariz. App. 550, 416 P.2d 444 (App. 1966), the Court of Appeals
26 upheld defendant's conviction on three counts of manslaughter that arose from a single vehicle

1 accident where defendant was the driver. In upholding the separate counts for each victim, the
2 Court of Appeals stated:

3 [T]he legislature intended that the killing of each human being, under the
4 circumstances described in the code, would constitute a separate offense. Respect
5 for human dignity is of the essence of our way of life. Certainly it is keeping with
6 this spirit that the wrongful killing of each human being should be treated as a
7 separate offense.

8 *Id.* at 558. See also *Gentry v. MacDougall*, 685 F.2d 322 (9th Cir. 1982) (Two counts of
9 vehicular homicide as result of drunk driving accident in which defendant struck a taxi, killing
10 both driver and passenger, were authorized by Arizona legislature and double jeopardy did not
11 prohibit consecutive sentences.); *State v. Jannamon*, 169 Ariz. 435, 439, 819 P.2d 1021 (App.
12 1991) (Defendant properly charged with three counts of public sexual indecency when three
13 victims witnessed a single act); *State v. Riley*, 196 Ariz. 40, 46, 992 P.2d 1135 (App. 1999)
14 (Defendant properly convicted of six counts of armed robbery after using deadly force against
15 six bank employees even though only one act of taking of property occurred.)

16 It is clear that under Arizona law, when a single act of a defendant causes separate
17 criminal results to multiple victims, a defendant should be charged with separate offenses for
18 each victim and may be sentenced consecutively on the charges. In the instant case, Defendant
19 was convicted of three separate counts of Negligent Homicide for causing the deaths of Kirby
20 Brown, Lizbeth Neuman and James Shore. The jury and this Court arguably heard evidence that
21 Defendant's committed multiple acts that caused the deaths of three victims. Nonetheless, if
22 Defendant argues that he committed only one act, the law is clear this Court may – and should –
23 impose consecutive sentences.
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1 **III. Additional Aggravating Circumstances Pursuant to A.R.S. § 13-701(C)(24)**

2 Arizona Revised Statutes § 13-701(F) provides that “[i]f the trier of fact finds a least one
3 aggravating circumstance, the trial court may find by a preponderance of the evidence additional
4 aggravating circumstances.”

5 On June 30, 2011, the jury found the State had proven the aggravating circumstance of
6 emotional harm to each of the victims’ families beyond a reasonable doubt. This is a specifically
7 enumerated aggravating circumstance set forth in A.R.S. § 13-702(D)(9).¹ As a result of the
8 jury’s finding, this Court may now “find and consider additional factors relevant to the
9 imposition of a sentence up to the maximum prescribed in [A.R.S. § 13-702(D)].”²

10 *State v. Martinez*, 210 Ariz 578, 585, 115 P.3d 618, 625 (2005), provides that “once a
11 jury finds or a defendant admits a single aggravating factor, the Sixth Amendment permits the
12 sentencing judge to find and consider additional factors relevant to the imposition of a sentence
13 up to the maximum prescribed in that statute.” Accordingly, this Court can consider “any
14 reliable, relevant evidence, including hearsay,” in imposing the sentence. *Rule 26.7(b), Ariz. R.*
15 *Crim. P.* At the pre-sentence hearing, the State will offer information and evidence of additional
16 aggravating circumstances that should be considered by this Court in imposing sentence.
17 Pursuant to A.R.S. § 13-701(C)(24), this Court shall consider “any other factor that the state
18 alleges is relevant to the defendant’s character or to the nature or circumstances of the crime.”
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22 ¹ In addition to the emotional harm aggravator, the jury found an additional aggravating
23 circumstance that Defendant was in a unique position of trust with Lizbeth Neuman. This
24 aggravating circumstance falls under the “catch-all” provision set forth in A.R.S. § 13-702(24)
and is not a specifically enumerated aggravating circumstance.

25 ² Because the jury found only one specifically enumerated aggravating circumstance, the law
26 provides that Defendant may not be sentenced to the substantially aggravated term set forth in
A.R.S. § 13-702 (D). See *State v. Perrin*, 222 Ariz. 375, 378, 214 P.3d 1016, 1019 (App. 2009)
(Trial court required to find at least two enumerated factors in order to impose a substantially
aggravated sentence.)

1 The State alleges the following additional aggravating circumstances pursuant to A.R.S.
2 § 13-701(C)(24):

- 3 1. Defendant's history and pattern of negligent conduct that has harmed others;
- 4 2. Trust place by participants in Defendant;
- 5 3. Defendant's lack of qualifications to conduct his events, creating a risk of harm to
6 others, and his misrepresentation of his qualifications;
- 7 4. Many other individuals were injured, both physically and emotionally, during
8 Defendant's heat event in October of 2009.

9 **IV. Victim Restitution**

10 Arizona Revised Statutes § 13-603(C) states that: "[t]he court shall require the convicted
11 person to make restitution to the person who is the victim of the crime or to the immediate
12 family of the victim if the victim has died, in the full amount of the economic loss as determined
13 by the court...." Arizona Revised Statutes § 13-105(16) defines "economic loss" to include "loss
14 interest, lost earnings and other losses which would not have been incurred but for the offense."

15
16 In *State v. Madrid*, 207 Ariz. 296, 85 P.3d 1054 (App. 2004), the Court of Appeals held
17 that the children of a murder victim were entitled to restitution for travel expenses relating their
18 voluntary attendance at trial. *Id.* at 300, 85 P.3d at 1058. In doing so, the Court resolved what it
19 described as an "irreconcilable" conflict between *State v. Wideman*, 165 Ariz. 364, 798 P.2d
20 1373 (App.1990), wherein the court had held that travel expenses to attend court hearings were
21 consequential losses not eligible for restitution; and *State v. Lindsley*, 191 Ariz. 195, 953 P.2d
22 1248 (App.1997), wherein the Court of Appeals addressed the issue of lost wages during
23 voluntary court attendance by a victim and held that such expenses are covered by restitution. In
24 adopting the reasoning of *Lindsley*, the *Madrid* court noted the following:

25
26 Clearly, the necessity for Madrid's trial was entirely a consequence of his act of
murder. At that point in time, the die was cast and the children were irrevocably

1 “entwined in the criminal proceedings,” including the trial, without the
2 occurrence of any additional causative event. Accordingly, we conclude that the
3 travel expenses relating to the children’s voluntary attendance at Madrid’s trial
4 constitute an economic loss for which they are entitled to restitution.

5 *Id.* at 300, ¶ 10, 85 P.3d at 1058.

6 Trial courts are afforded discretion to set the restitution amount according to the facts of
7 a case in order to make the victim whole. *State v. Ellis*, 172 Ariz. 549, 551, 838 P.2d 1310, 1312
8 (App.1992). Both the Arizona Constitution and the victims’ rights statutes specifically guarantee
9 to the immediate family members of a deceased victim the right to be present at all court
10 proceedings. Ariz. Const. Art. 2 § 2.1(3); A.R.S. § 13-4420; *Madrid, supra* at ¶7, 85 P.3d at
11 1057 (“Given the constitutional status now accorded a victim’s right to attend all court
12 proceedings, *Wideman’s* description of the murder victim’s family’s attendance at court hearings
13 as simply a matter of ‘choice’ or ‘desire’ is outdated.”).

14 The State requests restitution to the victims in the amount of \$67,255.31.³ Included in
15 this amount are the victims’ families’ expenses to attend trial, including lost wages and travel;
16 restitution for the cost of James Shore’s funeral and travel expenses for James Shore’s sister;
17 restitution for the cost of Lizbeth Neuman’s sister to travel to her funeral and costs incurred by
18 Mika Cutler in assisting Kirby Brown’s family in obtaining her property and taking care of
19 Kirby Brown’s dog following her death. A summary of these costs is provided in Exhibit B.
20

21
22 **V. Effect of civil settlements on the victims’ right to restitution.**

23 As this Court is aware, the victims’ immediate families have received civil settlements
24 for their civil claims against Defendant. The State is not a party to the proceedings and does not
25

26 ³ The amount requested is based on information received from the victims as of September 15,
2011. The State anticipates receiving additional information relating to the victims’ attendance at

1 have access to the details of the settlements. The State offers, however, the following summary
2 of the law regarding the effect of civil settlements on criminal restitution.

3
4 In *State v. Iniguez*, 169 Ariz. 533, 821 P.2d 194 (App. 1991), the Court of Appeals noted
5 the following:

6 Restitution and civil damages are independent under Arizona law, and the state's
7 power to order restitution does not bar a victim from seeking damages in a civil
8 action. We believe the converse is also often true. Because restitution also
9 promotes the rehabilitative purpose of the criminal law, and because civil damage
10 payments may not be fully compensatory, the court is not automatically
11 foreclosed from ordering some restitution simply because the victim has received
12 some compensation as a result of a civil action. Moreover, the distinction between
13 civil damages and restitution means that the victim's release of *civil* liability does
14 not prevent the state from ordering the *criminal* law remedy of restitution. The
15 victim's release of his or her claims does not encompass restitution: restitution is
16 not a claim which belongs to the victim, but a remedial measure that the court is
17 statutorily obligated to employ.

18 *Id.* at 536, 821 P.2d at 197 (internal citations omitted).

19 Arizona courts have recognized that "[s]ettlement of a civil lawsuit may extinguish a
20 defendant's restitution obligation to the extent that the settlement compensates the victim's
21 family economic loss." *State v. Andersen*, 177 Ariz. 387, 868 P.2d 964, 970 (App. 1993). In
22 *Anderson*, the defendant claimed his civil settlement contained an agreement in accord with
23 *Damron v. Sledge*, 105 Ariz. 151, 460 P.2d 997 (1969), "that upon execution of this agreement,
24 all restitution ordered by the court in the criminal action ... is declared paid and satisfied." *Id.* at
25 387, 868 P.2d at 970. On review, the Court of Appeals found the trial court had erred in
26 summarily rejecting this claim and remanded the case with the following instructions:

Because the petition adequately alleged a settlement, we remand this matter for
the court to determine the existence of the *Damron* agreement and the degree of
its conclusive effect. If the agreement extinguishes any right of restitution that the
victim's family has against the defendant, the restitution order should be vacated.

the presentence and sentencing proceedings and would ask this Court to retain jurisdiction over
restitution in order to compensate the victims for their complete financial losses.

1 If the agreement is not as broad as has been alleged by the defendant, the court
2 should determine to what degree the settlement compensates the family for its
3 economic loss and give the defendant a corresponding offset against the ordered
4 restitution.

5 *Id.* The State asserts that the restitution requested in Exhibit B is not be covered by the civil
6 settlements either because it involves a family member or other individual that was not a party,
7 or because it seeks costs for victims directly related to attending the trial which were incurred
8 following the settlement of the claims.

9 **VI. Costs of Prosecution**

10 Defendant is not a resident of Arizona yet, as this Court learned during the trial, he
11 conducted a high risk activity here, causing the deaths of three participants with criminal
12 negligence. This Court also learned during the trial that Defendant charged approximately
13 \$10,000 per participant for his Spiritual Warrior Seminar, an event he has held in Arizona
14 annually since 2003. Because Defendant chose to hold his event in Yavapai County, the
15 extraordinary costs of the subsequent investigation and prosecution fell to this county. The law
16 clearly allows this Court to require Defendant to reimburse the State for the costs of prosecution
17 and the State requests that this Court do so.

18 Arizona Revised Statutes § 13-804(A) provides that "upon a defendant's conviction for
19 an offense causing economic loss to any person, the court, in its sole discretion, may order that
20 all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to
21 any person who suffered an economic loss caused by the defendant's conduct." "The term
22 person, unless the context otherwise requires, includes a government or governmental authority."
23 *State v. Maupin*, 166 Ariz. 250, 252, 801 P.2d 485, 487 (App. 1990); A.R.S. § 13-105(29).
24

25 Subsection (J) to A.R.S. § 13-804 provides for the creation of a restitution lien "in favor
26 of the state for the total amount of restitution, fine, surcharges, assessments, costs, incarceration

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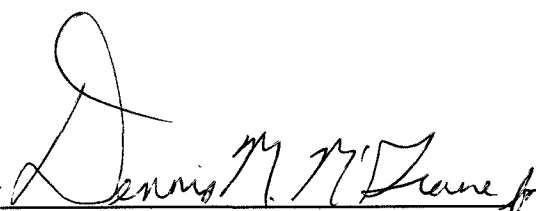
1 costs and fees ordered if any." Arizona Revised Statutes § 13-806(H) states the following:

2 Following the entry of the judgment and sentence in the criminal case, if the trial
3 court sentences the defendant to pay a fine or **awards costs of investigation or**
4 **prosecution**, the state may file a restitution lien pursuant to this section for the
amount of the fine or costs. (*emphasis added*)

5 In *Maupin, supra*, the Court of Appeals looked to the legislative history relating to the
6 above cited statutes and concluded the legislature's change in the statutory language of A.R.S. §
7 13-804 reflected "an intent to allow a trial court to require a defendant, as part of a sentence, to
8 reimburse the state for the costs of prosecution." *Maupin*, 166 Ariz. at 252, 801 P.2d at 487. In
9 *Maupin*, the Court considered whether a defendant could be required to pay the cost of her
10 extradition as a part of her sentence. While the Court found the costs were not authorized under
11 A.R.S. § 13-603(C) as restitution to a victim, the Court found authority pursuant to A.R.S. § 13-
12 804 for a trial court to require a defendant to reimburse the State for the costs of prosecution. *Id.*
13 at 253, 801 P.2d at 488. The Court further noted that such costs should be designated as a fine
14 under A.R.S. § 13-804(A). *Id.*

15 Based on the above authority, the State requests this Court to order Defendant to
16 reimburse the State for the cost of prosecution to include witness travel costs, fees and expenses.
17 To date these cost total \$67,795.84. (See Exhibit C). The State does **not** request Defendant be
18 fined for the personnel costs incurred by the State in prosecuting or investigating this case.

19 RESPECTFULLY submitted this 16th day of September, 2011.

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22
23
24 By 
25 SHEILA SULLIVAN POLK
26 YAVAPAI COUNTY ATTORNEY

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By: Kathy Durrer

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY FIFTY
JUNE 3, 2011
Camp Verde, Arizona
(Partial transcript.)

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 Q. Okay. And do you recall whether you felt
2 any difference in the air quality when the flap was
3 opened as opposed to when the flap was closed?

4 A. I didn't notice any change when it was
5 open.

6 Q. Do you recall at some point hearing a
7 comment from Megan Fredrickson to James Ray?

8 A. Yes.

9 Q. And at what round was that comment?

03:32:51PM

10 A. I believe it was the fourth round.

11 Q. And what did Megan tell James Ray?

12 MS. DO: Objection. Hearsay.

13 THE COURT: Overruled.

14 You may answer that.

15 THE WITNESS: I heard her say, James, these
16 people are your responsibility.

17 Q. BY MR. HUGHES: And what sort of strength
18 or loudness or lack of loudness -- that's a bad
19 question. How loud was her voice when she made
20 that comments to Mr. Ray?

03:33:13PM

21 A. It was enough for me to hear it clearly
22 from this -- from where she, I believe, was sitting
23 was there to where I was sitting.

24 Q. And did you hear Mr. Ray respond to
25 Ms. Fredrickson?

Copy For : Division-
Prosecutor
Defense Atty
APO
Victim Services

PRELIMINARY

SUMMARY OF VICTIM FINANCIAL LOSSES

Date : September 15, 2011

Defendants : James Arther Ray

Cause No : [REDACTED]

Prosecutor : Sheila Polk

Sara Oldre	Liz Neuman's Sister	Travel to funeral for family	\$ 2,504.81	\$ -	\$ -
George and Virginia Brown		Travel to AZ during trial	\$ 8,303.54	\$ -	\$ -
		Lost Wages - George Brown	\$ 15,000.00	\$ -	\$ -
		Lost Wages - Virginia Brown	\$ 21,109.38	\$ -	\$ -
Tom and Virginia Shore (James Shore's sister)		Cost of Funeral and Travel expenses	\$ 12,000.00	\$ -	\$ -
Thomas McFeeley (Kirby Brown's cousin)		Travel for trial	\$ 1,759.64	\$ -	\$ -
Milka Cutler (friend of Kirby Brown)		Assisted family in returning Kirby's property	\$ 255.24		
		Care of Kirby's dog	\$ 2,885.52		
James Kelly (Kirby Brown's cousin)		Travel to trial - mileage	\$ 940.44		
Jean Brown (Kirby's sister)		Travel to trial	\$ 209.00		
Sharon Moody (Liz Neuman's cousin)		Travel to trial	\$ 2,287.74		

Expenses up to August 10, 2011

Vendor Number	Vendor Name	Transaction Date - Calc	Account Number	Invoice Number	Transaction Amount
12226	BRINKLEY, KIM	7/18/2011	001-2200-410 24-04	TRAVEL05110611	143.48
547	SPENCER, SIDNEY	7/15/2011	001-2200-410 24-04	TRAVEL0311	394 74
14411	ROCK, MARK	7/19/2011	001-2200-410 24-04	TRAVEL05110611	374 68
22345	OLESEN, MIKE	7/15/2011	001-2200-410.24-04	TRAVEL0311	178.84
42500	MOSLEY MD, ARCHIAUS	5/17/2011	001-2200-410.24-04	TRAVEL0511	142.40
42500	MOSLEY MD, ARCHIAUS	1/25/2011	001-2200-410.24-04	TRAVEL0111	98 94
2915	BARRATT, WILLIAM SCOTT	5/17/2011	001-2200-410.24-04	TRAVEL0311	1,085.40
12706	RONAN, SEAN	5/17/2011	001-2200-410 24-04	TRAVEL0311	279 72
9401	ANDRESANO, LINDA	5/17/2011	001-2200-410 24-04	TRAVEL0311	352 24
11912	BUNN, BEVERLEY	5/17/2011	001-2200-410 24-04	TRAVEL0311	327.92
6231	MEHRAVAR, DENNIS	5/17/2011	001-2200-410 24-04	TRAVEL0311	241 00
1404	PHILLIPS, MELISSA	5/17/2011	001-2200-410 24-04	TRAVEL02110311	250.00
2283	TUCKER, LAURA	5/17/2011	001-2200-410.24-04	TRAVEL0311	226 00
159	CACI, LOU	5/17/2011	001-2200-410.24-04	TRAVEL0311	95.00
2607	HALEY, JENNIFER	5/24/2011	001-2200-410 24-04	TRAVEL0311	749 52
2607	HALEY, JENNIFER	5/24/2011	001-2200-410 24-04	TRAVEL02110311	1,020 58
119	HUDSON, MELINDA	6/14/2011	001-2200-410 24-04	TRAVEL0311	432 82
16511	GRANQUIST, DANIELLE	5/17/2011	001-2200-410.24-04	TRAVEL0311	131 00
2400	DICKSON, DR MATHEW DOUGLAS	6/28/2011	001-2200-410.24-04	RAY053111	17,600.00
258089	SEDONA PHOENIX SHUTTLE SVS INC	8/2/2011	001-2200-410 24-04	3029061411	80 00
258089	SEDONA PHOENIX SHUTTLE SVS INC	6/28/2011	001-2200-410 24-04	3029	160 00
258089	SEDONA PHOENIX SHUTTLE SVS INC	4/25/2011	001-2200-410 24-04	3019	840 00
6615	HADDOW ENVIRONMENTAL RESEARCH ORG	5/3/2011	001-2200-410.24-04	110445	2,644.28
23000	PETERSON, MARK	3/29/2011	001-2200-410.24-04	12111	375 00
	CHASE VISA	4/29/2011	001-2200-410-24-04		1,333.80
	CHASE VISA (CREDIT)	4/29/2011	001-2200-410-24-04		-384 80
	CHASE VISA	6/30/2011	001-2200-410-24-04		1,381 20
8355	PACE, STEVEN	2/1/2011	001-2200-410 24-04	2YACO	500.00
8355	PACE, STEVEN	1/18/2011	001-2200-410 24-04	1YCAO	675 00
5207	ADVENTURE TRAVEL	3/1/2011	001-2200-410 24-04	3938	732 30
5207	ADVENTURE TRAVEL	2/24/2011	001-2200-410 24-04	10262	2,661.65
5207	ADVENTURE TRAVEL	2/24/2011	001-2200-410 24-04	10263	983 95
5207	ADVENTURE TRAVEL	2/24/2011	001-2200-410.24-04	10264	409 40
5207	ADVENTURE TRAVEL	2/24/2011	001-2200-410 24-04	10265	2,676 23
5207	ADVENTURE TRAVEL	2/24/2011	001-2200-410 24-04	10266	2,676 23
5207	ADVENTURE TRAVEL	2/24/2011	001-2200-410 24-04	10267	910 68
5207	ADVENTURE TRAVEL	3/8/2011	001-2200-410 24-04	10279	568.00
5207	ADVENTURE TRAVEL	4/11/2011	001-2200-410 24-04	BRINKLEY031611	170.00
1977	ROSS, RICK ALAN	9/20/2010	001-2200-410 24-04	119598	2,500.00
1977	ROSS, RICK ALAN	2/8/2011	001-2200-410 24-04	124465	2,657 00
2400	DICKSON, DR MATHEW DOUGLAS	12/22/2010	001-2200-410 24-04	121472	2,000 00
3701	NMS LABS/NATL MEDICAL SVS INC	4/29/2011	001-2200-410 24-04	7406	153 00
3701	NMS LABS/NATL MEDICAL SVS INC	4/27/2011	001-2200-410 24-04	7377	146 25
	CHASE VISA	3/8/2011	001-2200-410 28-04		339 40
	CHASE VISA	3/8/2011	001-2200-410 24-04		30 00
	CHASE VISA	4/8/2011	001-2200-410.24-04		6,038 20
	COMFORT INN	8/11/2011	001-2200-410 24-04	748836	7,149 05
	AMSTEL, BRANDY	8/19/2011	001-2200-410.24-04	TRAVEL	675 54
	BROWN, VIRGINIA	8/19/2011	001-2200-410 24-04	TRAVEL	969 80
	PUCKETT, ANDREA	8/19/2011	001-2200-410 24-04	TRAVEL	1,060 40
	GENNARI, LAURIE	8/19/2011	001-2200-410 24-04	TRAVEL	237.00
	WAGONER, NELL	8/19/2011	001-2200-410.24-04	TRAVEL	102 00
	RAY, STEPHEN	8/19/2011	001-2200-410 24-04	TRAVEL	221 00